THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, the 16th day of July,2007

W.P.Nos.20941 of 1998 and 179, 240,299 and 724 of 2000

W.P.No.20941 of 1998

Between:-

A. Venaiah … Petitioner

and

The Vice-Chairman & Managing Director, Girijan Cooperative Corporation Ltd., Visakhapatnam and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.20941 of 1998 and 179, 240,299 and 724 of 2000

COMMON ORDER:

In all these Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

It appears, petitioners are all working as Measurers-cum-Watchmen etc., in the respondent-Girijan Cooperative Corporation Limited. When their services are sought to be terminated, though they have rendered continuous service of more than 10 years, they filed various Writ Petitions earlier and during the pendency of those Writ Petitions, they were all continued. After the disposal of the Writ Petitions, as per the directions therein, the services of the petitioners were regularized as per G.O.Ms.No.212, dated 22-4-1994 since they have completed five years of service as required under the said G.O. However, it appears, thereafter when the matter was referred to Government for ratification, Government stated that since there are no sanctioned posts available, petitioners are not entitled for regularization of their services as per G.O.Ms.No.212, dated 22-4-1994; therefore, the regularization of their services by the respondent-Corporation is not valid and directed to cancel orders of regularization, by way of issuing a show cause notice. Subsequently, show cause notices were issued and the services of the petitioners were sought to be terminated. Hence, these Writ Petitions.

It is an admitted fact that even before terminating their services, for the first time in the year 1995, petitioners had put in more than 10 years of continuous service. There is no allegation that they were appointed either by back-door methods or contrary to the Rules or they do not possess the minimum qualifications as required under the Service Regulations. The earlier Writ Petitions, of course, were disposed of by setting aside the termination orders and directing the respondents to consider the case of the petitioners for regularization with effect from the date of completion of five years of service in the respondent-Corporation. Of course, the respondent-Corporation has considered the case of the petitioners as per G.O.Ms.No.212, dated 22-4-1994 and regularized the services of the petitioners, which is sought to be cancelled

in view of the advise given by the Government.

There is no necessity of going into all the details. As on today, petitioners have completed more than 20 years of service – 10 years prior to filing of Writ Petition No.17001 of 1995 etc. Now, it is more than ten years in view of various litigation pending before this Court. It is admitted that the petitioners were not appointed through back-door method and they were not declared unqualified. Even in the earlier Writ Petition in W.P.No.17584 of 1995, dated 20-2-1996, it was pointed out that the very fact that there was sufficient work for all the 11 years and the services of the petitioners were utilized for full 11 years would show that the posts in which they were continued as N.M.Rs. are permanent and can never be treated as temporary. Further, paragraph-53 of the Judgment reported in **SECRETARY, STATE OF KARNATAKA v. UMADEVI(3)**[1], reads as under:

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V.Narayanappa {1967(1) SCR 128}, R.N. Nanjundappa {1972(1) SCC 409* and *B.N. Nagarajan {1979(4) SCC 507}* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more, but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

From a reading of the above Judgment, it is clear that when irregular appointments of duly qualified persons in duly sanctioned vacant posts might have been made and they have continued to work for ten years or more, but without the intervention of the orders of Courts or of Tribunals, their cases can be considered for regularization. In the cases on hand, even in the earlier Judgment, as noticed above, this Court held that since the petitioners are working for more than 10 years, even as on the date of filing of the earlier Writ Petition, it must be deemed that there are permanent vacancies available. Such a finding of this Court had become final.

Under the above circumstances, I am of the opinion that the petitioners are entitled for regularization of their services in the posts in which they are working or in equivalent posts in the Corporation. Therefore, the impugned Proceedings are liable to be set aside and are accordingly set aside.

In the result, the Writ Petitions are allowed and the respondents are directed to treat the orders of regularization of the petitioners, which were made earlier by the respondent-Corporation, as valid and proper. No order as to costs.

16-7-2007

prk

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[1] 2006(4) SCC 1